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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF WASHINGTON**

7 LAURA K. HOLT-FLETES,

8 Plaintiff,

9 vs.

10 COMMISSIONER OF SOCIAL
11 SECURITY,

Defendant.

No. 2:17-cv-00295-MKD

**ORDER DENYING
DEFENDANT'S MOTION TO
DISMISS**

ECF NO. 10

12 **BEFORE THE COURT** is Defendant's Motion to Dismiss (ECF No. 10)
13 filed October 27, 2017 asking the Court to dismiss the Complaint for lack of
14 jurisdiction. Plaintiff subsequently filed the Amended Civil Complaint. ECF No.
15 11. After review of the Motion, the court expedites the hearing without further
16 response. Local Rule 7.1(h). Attorney Cathy Helman represents Plaintiff; Special
17 United States Assistant Attorney Joseph Langkamer represents Defendant. The
18 parties have consented to proceed before a magistrate judge. ECF No. 8. The
19 Court has reviewed the record herein and is fully informed.

20 Federal Rule of Civil Procedure 8 requires that complaints consist of "(1) a

1 short and plain statement of the ground for the court’s jurisdiction...(2) a short and
2 plain statement of the claim showing that the pleader is entitled to relief; and (3) a
3 demand for the relief sought...” Fed.R.Civ.P. 8(a). In this case, this Court only
4 has jurisdiction to review the Commissioner’s “final decision.” 42 U.S.C. §
5 405(g). The administrative law judge’s decision becomes the final decision of the
6 Commissioner when the Appeals Council denies review. *See Sam v. Astrue*, 550
7 F.3d 808, 810 (9th Cir. 2008).

8 Defendant’s Motion contends the allegations in Plaintiff’s original
9 Complaint, ECF No. 4, are insufficient to confer subject matter jurisdiction
10 because it seeks review of the Appeals Council’s decision denying Plaintiff’s
11 request for review. ECF No. 10. The Complaint did not specifically describe the
12 action taken by the Appeals Council, however, to the extent it was a denial of
13 review, this type of action is not a “final decision” and therefore not subject to
14 judicial review. *See Brewes v. Comm’r of Soc. Sec. Admin.*, 682 F.3d 1157 (9th
15 Cir. 2012) (“[W]e do not have jurisdiction to review a decision of the Appeals
16 Council denying a request for review of an ALJ’s decision, because the Appeal
17 Council decision is a non-final agency action.”).

18 Plaintiff’s Amended Complaint corrects the deficiency by amending the
19 pleading to ask the court to “review the final decision of the Commissioner” and
20 set aside “the decision of the Commissioner...” ECF No. 11 at 2. However,

1 Plaintiff persists in characterizing the Appeals Council's order as "the Final Order"
2 which in this court's experience reviewing social security records, has no legal or
3 factual basis. *See Moore v. Astrue*, EDWA Cause No. 2:11-cv-00268-CI, 2013
4 WL 53721, at *3 (E.D.Wash. Jan. 3, 2013) (unpublished) (concluding "Plaintiff's
5 characterization of the Appeals council's action...as a 'Final Order' is without
6 factual or legal basis."). The next sentence of the Amended Complaint vaguely
7 refers to "[s]aid final decision" without identifying it. ECF No. 11 at 1.

8 Plaintiff's counsel has filed a number of cases in this District utilizing a
9 pleading similar to the original Complaint, which Defendant has answered without
10 contesting jurisdiction. It is reasonable to infer that Plaintiff is seeking judicial
11 review of the denial of an application for Social Security benefits. Nonetheless,
12 social security appellants are not exempt from the rules of civil pleading in federal
13 court, which are not onerous. Plaintiff could further improve the pleading to
14 ensure it contains both a short and *plain* statement meeting the requirements of
15 Rule 8. The Court, however, concludes the Plaintiff's allegations in the Amended
16 Complaint, are an adequate statement of the grounds for the court's jurisdiction
17 and will not require further amendment at this time.

18 **ACCORDINGLY, IT IS HEREBY ORDERED:**

19 1. Defendant's Motion to Dismiss (ECF No. 10) is **DENIED**.

20 2. Defendant shall file its response to the Amended Complaint and the

1 administrative transcript by not later than **November 6, 2017**.

2 The District Court Executive is directed to enter this Order and forward
3 copies to counsel.

4 DATED October 27, 2017.

5 s/Mary K. Dimke
6 MARY K. DIMKE
7 UNITED STATES MAGISTRATE JUDGE
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